State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

M e m o r a n d u m

Tab 19

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 18-19, 2016

Reference No.: 4.19
Information Item

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Subject: FAST ACT – IMPLEMENTATION AND FEDERAL FUNDING ISSUES INCLUDING REPURPOSING GRANTS

SUMMARY:

On December 4, 2015, President Obama signed the "Fixing America's Surface Transportation (FAST) Act" into law. The FAST Act is largely consistent with the prior Act, known as the Moving Ahead for Progress in the 21st Century Act (MAP-21), in terms of policies and funded programs. One notable difference between the two acts is a new apportioned program called the National Highway Freight Performance Program, intended to focus on efficient movement of freight.

BACKGROUND:

The FAST Act is a five-year act that was signed into law on December 4, 2015, making it the first new transportation act in more than a decade that provides true long-term funding commitments and policy direction. MAP-21 was a two-year act, and while new policy direction was set forth in MAP-21, long-term funding was lacking. Nation-wide, the FAST Act provides more than $300 billion for transportation priorities through 2020. Funding levels for California in the Fast Act are consistent with the adopted 2016 State Transportation Improvement Program Fund Estimate.

Funding Splits
Since the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law in 2005, the approximate split of federal funding between the State and local transportation agencies has been approximately 60 percent/40 percent for apportioned programs. The 60 percent/40 percent split of funding was a natural outcome of a combination of state and federal laws, and commitments to fund important activities such as local bridge safety.

Certain federal fund apportionment categories are designated in part, or wholly for local control by federal law. This includes Congestion Mitigation and Air Quality (CMAQ) funding, Metropolitan Planning funding, and a portion of Surface Transportation Block Grant Program (STBGP). Other funds, such as Highway Safety Improvement Program (HSIP) funding is split between state and local agencies by state law.

When MAP-21 effectively combined a number of apportionment categories in to larger, more broadly-based categories, some apportionment categories that were shared between the state and local agencies were rolled into other categories. The California Department of Transportation (Department) and local agencies worked together to reach agreement on funding splits that followed the same 60 percent/40 percent ratio from prior federal acts.

National Highway Freight Program
Perhaps the most significant change in apportionment categories inherent in the FAST Act is the addition of the National Highway Freight Program (NHFP), and the creation of the National Highway Freight Network (NHFN). Generally, NHFP funds must be used to contribute to the efficient movement of freight on the NHFN, and be identified in a freight investment plan included as part of the State's freight plan. The FAST Act provides about $582 million in NHFP apportionments to California over the five-year period of the act. Eligible projects are on Federal Highway Administration's (FHWA) designated Primary Highway Freight System, Critical Rural Freight Corridors, and Critical Urban Freight Corridors.

States will be able to obligate up to 10 percent of their freight program funds for improvements to freight rail or ports, statutorily breaking a long-standing practice against using the Highway Trust Fund (HTF) resources for modes of transportation other than highways and public transportation. This is especially notable in light of the fact that neither ports nor rail companies contribute to the HTF.

Fast Lane Grants
The NSFHP program provides financial assistance of approximately $900 million per year in the form of national-competitive grants known as Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies (FASTLANE) grants, to nationally and regionally significant freight and highway projects. The FASTLANE grants provide dedicated funding for projects that address major issues facing our nation's freight infrastructure, including highways, bridges and including intermodal projects.

The FASTLANE grants may not exceed 60 percent of the total eligible project costs for qualifying NSFHP projects. An additional 20 percent may come from other federal sources bringing federal participation up to an 80 percent maximum. The remaining project costs must come from non-federal sources such as state funds, local funds, and private funds.

Repurposing of Earmarks
The 2016 Consolidated Appropriations Act appropriated funds for a multitude of federal programs, including transportation. The Consolidated Appropriations Act also included a provision allowing for the repurposing of certain federal earmark funds. On March 8, 2016, FHWA issued guidance on the implementation of earmark repurposing. FHWA also released lists of earmark projects that are potentially eligible for the repurposing.

To be eligible for repurposing, an earmark project must have been earmarked more than 10 years ago, and:

- Have less than 10 percent funding obligated, or
- If more than 10 percent of funding is obligated, the project has been completed and closed with savings to the earmark.

The Department's Division of Local Assistance has determined that a range of $110 to $200 million in earmarks may be eligible for repurposing. A letter from the Division of Local Assistance to appropriate local entities was sent April 18, 2016, detailing the process for repurposing as well as laying out important deadlines. Repurpose requests are ultimately due to the Federal Highway Administration by September 12, 2016. Repurposed earmarks must be used on projects within 50 miles of the original earmark project.

Transportation Funding Alternatives

The FAST Act directs the United States Secretary of Transportation to make grants to states in order to demonstrate alternative, user-based revenue mechanisms that could maintain the long-term solvency of the HTF. The goal is to test at least two alternative user-based revenue mechanisms and provide recommendations for adoption and implementation at the federal level. Funding will be up to $95 million with the federal share limited to 50 percent of eligible project costs.